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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 *HCS* CS FOR SENATE BILL NO. 1 (eff. date & Ct. Rule failed)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating the office of the ombudsman."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 24 is amended by adding a new chapter to read:

9 CHAPTER 55. OFFICE OF THE OMBUDSMAN.

10 ARTICLE 1. ORGANIZATION.

11 Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in
12 the legislative branch of the state the office of the ombudsman.

13 Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) The rules
14 committee of the senate shall examine persons to serve as the ombuds-
15 man regarding their qualifications and abilities and shall place the
16 name of one or more persons recommended before the senate for appoint-
17 ment as the ombudsman.

18 (b) A candidate for appointment as the ombudsman shall be nomi-
19 nated by the senate by a concurrent resolution adopted by a roll call
20 vote of a majority of its members entered in the journal. The
21 appointment of a person nominated as the ombudsman by the senate is
22 effective if his candidacy is

23 (1) confirmed by a roll call vote of a majority of the
24 members of the house of representatives entered in the journal; and

25 (2) approved by the governor.

26 (c) However, the governor may veto the appointment and return
27 it, with a statement of his objections, to the senate. Upon receipt
28 of a veto message the legislature shall meet immediately in joint
29 session and reconsider approval of the vetoed appointment. The vetoed

1 appointment becomes effective by an affirmative vote of two-thirds of
2 the membership of the legislature in joint session. The vote on
3 reconsideration of a vetoed appointment shall be entered in the journals
4 of both houses.

5 (d) The appointment of the ombudsman becomes effective if, while
6 the legislature is in session, the governor neither approves nor
7 vetoes it within 15 days, Sundays excepted, after its delivery to him.
8 If the legislature is not in session and the governor neither approves
9 nor vetoes the appointment within 20 days, Sundays excepted, after its
10 delivery to him, the appointment becomes effective.

11 Sec. 24.55.030. QUALIFICATIONS; PROHIBITION AGAINST POLITICAL
12 ACTIVITY. (a) No person may serve as ombudsman

13 (1) within two years of the last day on which he served as
14 a member of the legislature;

15 (2) while he is a candidate for or holds any other national,
16 state, or municipal office;

17 (3) while he is engaged in any other occupation for which
18 he receives compensation; and

19 (4) unless he is at least 21 years of age and is a quali-
20 fied voter who has been a resident of the state for at least three
21 years.

22 (b) The ombudsman and members of his staff shall maintain the
23 integrity and impartiality of the ombudsman's functions and services
24 by refraining from joining or supporting a partisan or nonpartisan
25 political organization, faction or activity which would tend to under-
26 mine the essential nonpartisan nature of their functions and services,
27 including but not limited to the making of political contributions.
28 However, this subsection does not restrict the ombudsman or members of
29 his staff from expressing private opinion, registering as to party, or

1 voting.

2 Sec. 24.55.040. TERM OF OFFICE. (a) The term of office of the
3 ombudsman is five years. An ombudsman may be reappointed but may not
4 serve for more than three terms.

5 (b) If the term of an ombudsman expires without the appointment
6 of a successor under this chapter, the incumbent ombudsman may continue
7 in office until a successor is appointed. If the ombudsman dies,
8 resigns, becomes ineligible to serve, or is removed or suspended from
9 office, the deputy ombudsman becomes acting ombudsman until a new
10 ombudsman is appointed for a full term.

11 Sec. 24.55.050. REMOVAL. The legislature, by a two-thirds vote
12 in each house, may remove or suspend the ombudsman from office, but
13 only for neglect of duty, misconduct, or disability.

14 Sec. 24.55.060. COMPENSATION. The ombudsman is entitled to
15 receive an annual salary equal to that of the chief justice of the
16 supreme court.

17 Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman shall
18 appoint a deputy ombudsman; he shall also appoint assistants and
19 clerical personnel necessary to carry out the provisions of this
20 chapter.

21 (b) The ombudsman may delegate to his deputy or assistants any
22 of his duties except those specified in secs. 190 - 200 of this chapter;
23 however, during the ombudsman's absence from his principal business
24 offices, the ombudsman may delegate the duties specified in secs.
25 190 - 200 of this chapter to his deputy for the duration of his absence.
26 Those duties specified in secs. 190 - 200 of this chapter shall be
27 performed by the deputy ombudsman when he is serving as acting ombuds-
28 man under sec. 40(b) of this chapter.

29 (c) The ombudsman and the staff appointed by him are in the

1 exempt service under AS 39.25.110.

2 Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION. (a) The
3 Alaska Legislative Council shall provide suitable office space and
4 equipment for the ombudsman and his staff.

5 (b) The salary and benefits of the ombudsman and his permanent
6 staff shall be paid through the same procedures used for payment of
7 the salaries and benefits of other permanent legislative employees.

8 (c) The ombudsman shall submit a budget for each fiscal year to
9 the finance committees of the legislature and shall annually submit an
10 estimated budget to the governor for information purposes in the
11 preparation of the executive budget.

12 Sec. 24.55.090. PROCEDURE. The ombudsman shall, by regulations
13 adopted under the Administrative Procedure Act (AS 44.62), establish
14 procedures for receiving and processing complaints, conducting investi-
15 gations, and reporting his findings. However, he may not levy fees
16 for the submission or investigation of complaints.

17 ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

18 Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdic-
19 tion to investigate the administrative acts of agencies.

20 (b) The ombudsman may exercise his powers without regard to the
21 finality of an administrative act.

22 Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman
23 shall investigate a complaint which is an appropriate subject for
24 investigation under sec. 150 of this chapter, unless he believes that

25 (1) there is presently available an adequate remedy for the
26 grievance stated in the complaint;

27 (2) the complaint relates to a matter that is outside the
28 jurisdiction of the ombudsman;

29 (3) the complaint relates to an administrative act of which

1 the complainant has had knowledge for an unreasonable length of time
2 before the complaint was submitted;

3 (4) the complainant does not have a sufficient personal
4 interest in the subject matter of the complaint;

5 (5) the complaint is trivial or made in bad faith;

6 (6) the resources of the ombudsman's office are insufficient
7 for adequate investigation; or

8 (7) there are other complaints more worthy of the ombudsman's
9 attention.

10 Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The
11 ombudsman may investigate the administrative act of an agency on his
12 own motion if he reasonably believes that it is an appropriate subject
13 for investigation under sec. 150 of this chapter.

14 Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman
15 decides not to investigate a complaint, he shall inform the complainant
16 of that decision and shall state his reasons unless he reasonably
17 believes it is inappropriate to state his reasons.

18 (b) If the ombudsman decides to investigate a complaint, he
19 shall notify the complainant of his decision.

20 Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides
21 to investigate a complaint, he shall notify the agency of his intention
22 to investigate unless he believes that advance notice will unduly
23 hinder the investigation or make it ineffectual.

24 ARTICLE 3. INVESTIGATIONS.

25 Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION. (a) An
26 appropriate subject for investigation by the ombudsman is an admini-
27 strative act of an agency which the ombudsman has reason to believe
28 might be

29 (1) contrary to law;

1 (2) unreasonable, unfair, oppressive, arbitrary, capricious,
2 an abuse of discretion, or unnecessarily discriminatory, even though
3 in accordance with law;

4 (3) based on a mistake of fact;

5 (4) based on improper or irrelevant grounds;

6 (5) unaccompanied by an adequate statement of reasons;

7 (6) performed in an inefficient manner; or

8 (7) otherwise erroneous.

9 (b) The ombudsman may investigate to find an appropriate remedy.

10 Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation,
11 the ombudsman may

12 (1) make inquiries and obtain information as he considers
13 necessary;

14 (2) enter without notice to inspect the premises of an
15 agency, but only when agency personnel are present; and

16 (3) hold private hearings.

17 Sec. 24.55.170. POWERS. (a) Subject to the privileges which
18 witnesses have in the courts of this state, the ombudsman may

19 (1) compel by subpoena, at a specified time and place, the
20 appearance and sworn testimony of any person who the ombudsman reason-
21 ably believes may be able to give information relating to a matter
22 under investigation; and

23 (2) compel any person, by subpoena, to produce documents,
24 papers, or objects which the ombudsman reasonably believes may relate
25 to the matter under investigation.

26 (b) If a person refuses to comply with a subpoena issued under
27 (a) of this section, the superior court may, on application of the
28 ombudsman, compel obedience by proceedings for contempt in the same
29 manner as in the case of disobedience to the requirements of a subpoena

1 issued by the court or refusal to testify in the court.

2 ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

3 Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving an
4 opinion or recommendation which is critical of an agency or person,
5 the ombudsman shall consult with that agency or person.

6 Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombuds-
7 man shall report his opinion and recommendations to an agency if he
8 finds, after investigation, that

- 9 (1) a matter should be further considered by the agency;
10 (2) an administrative act should be modified or cancelled;
11 (3) a statute or regulation on which an administrative act
12 is based should be altered;
13 (4) reasons should be given for an administrative act;
14 (5) any other action should be taken by the agency;
15 (6) there are no grounds for action by the agency; or
16 (7) the agency's act was arbitrary or capricious, constituted
17 an abuse of discretion, or was otherwise erroneous or not in accordance
18 with the law.

19 (b) The ombudsman may request the agency to notify him, within a
20 specified time, of any action taken on his recommendations.

21 Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. Within a
22 reasonable amount of time after the ombudsman reports his opinion and
23 recommendations to an agency he may present his opinion and recommen-
24 dations to the governor, the legislature, the public or any of these.
25 The ombudsman shall include with his opinion any reply made by the
26 agency.

27 Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable
28 time has elapsed, the ombudsman shall notify the complainant of the
29 actions taken by him and by the agency.

ARTICLE 5. MISCELLANEOUS

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2 Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman
3 believes there is a breach of duty or misconduct by an officer or
4 employee of an agency in the conduct of his official duties, the
5 ombudsman shall refer the matter to the chief executive officer of the
6 agency or, when appropriate, to a grand jury or to any other appropri-
7 ate official or agency.

8 Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to
9 the legislature and the public an annual report of his activities
10 under this chapter.

11 Sec. 24.55.240. JUDICIAL REVIEW. A proceeding or decision of
12 the ombudsman may be reviewed in superior court only to determine if
13 it is contrary to the provisions of this chapter.

14 Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. No civil action
15 may be brought against the ombudsman or a member of his staff for any-
16 thing done, said or omitted in performing his duties or responsibili-
17 ties under this chapter.

18 Sec. 24.55.260. LETTERS TO OR FROM OMBUDSMAN. A letter to the
19 ombudsman from a person held in custody by an agency shall be forwarded
20 immediately, unopened, to the ombudsman. A letter from the ombudsman
21 to a person held in custody by an agency shall be delivered immediately
22 unopened, to the person.

23 Sec. 24.55.270. TIME FOR JUDICIAL REVIEW OF AGENCY ACTION. This
24 chapter in no way extends the time limit in which judicial review of
25 agency action must be sought.

26 Sec. 24.55.280. PENALTY. A person who wilfully hinders the
27 lawful actions of the ombudsman or his staff, or who wilfully refuses
28 to comply with their lawful demands, or who wilfully violates sec. 270
29 of this chapter, is guilty of a misdemeanor and upon conviction is

1 punishable by a fine of not more than \$1,000.

2 Sec. 24.55.290. ADMINISTRATIVE PROCEDURE ACT. The administrative
3 acts of the ombudsman are not subject to the provisions of the Adminis-
4 trative Procedure Act (AS 44.62), except as provided in sec. 90 of
5 this chapter.

6 Sec. 24.55.300. CONFLICT OF INTEREST. The ombudsman, the
7 deputy ombudsman and their professional staff are subject to AS 39.50
8 (conflict of interest).

9 Sec. 24.55.310. DEFINITIONS. In this chapter

10 (1) "administrative act" means an action, omission, decision,
11 recommendation, practice, policy, or procedure of an agency, but does
12 not include the preparation or presentation of legislation or the
13 substantive content of a judicial order, decision or opinion;

14 (2) "agency" includes a department, office, institution,
15 corporation, authority, organization, commission, committee, council
16 or board of a municipality or in the executive, legislative or judi-
17 cial branches of the state government; and a department, office,
18 institution, corporation, authority, organization, commission, com-
19 mittee, council or board of a municipality or of the state government
20 independent of the executive, legislative and judicial branches; it
21 also includes an officer, employee or member of an "agency" acting
22 or purporting to act in the exercise of his official duties, but does
23 not include the governor, lieutenant governor, a member of the legis-
24 lature, justice of the supreme court, judge of the superior or district
25 court, magistrate, member of a city council or borough assembly,
26 elected city or borough mayor, or a member of an elected school board;

27 (3) "municipality" means a home rule or general law borough
28 or city including but not limited to a unified municipality organized
29 under AS 29.68.

1 Sec. 24.55.320. SHORT TITLE. This chapter may be cited as The
2 Ombudsman Act.

3 * Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:
4 (16) the ombudsman and his staff.
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